was not to affect such property interests, but rather to cut off the vesting of income payments which were not yet due, and remainder interests where the intervening estate had not yet terminated.[3]

3. The holding of the court below is in accord with the decision of Supreme Court of California in *In re Estate of Hogemann,* 45 Cal. Rep. 149, 403 P. 2d 405, the only other judicial decision involving the relevant provision of Public Law 87–846. It is true that in *Hogemann,* which also held the statutory cut-off inapplicable, the litigation pending on the cut-off date did not involve any substantial contentions in opposition to the Attorney General's claim, whereas in the case at bar the questions in litigation on that date were, concededly, substantial. Neither the purpose of the 1962 amendment, however, nor common legal parlance,

[3] The letter of Deputy Attorney General (now Mr. Justice) White (reproduced at 108 Cong. Rec. 19228) explains the language of the 1962 amendment, which was drafted by the Department of Justice as a substitute for a bill which would have returned all vested property which the Attorney General had not "reduced to possession" by the cut-off date. S. 291, 87th Cong., 1st Sess. The letter states that a cut-off in vesting was needed because "with the passing years, the expense of collecting income payments and preserving remainder interests will become disproportionately large in relation to the value of the property to be taken in." The letter also states that the Department's proposed language—which Congress accepted—provides for the Attorney General's retention of "all interests that will have become due" by the cut-off date. Petitioners' remainder presents the familiar example of a property interest that became "due" years before it was, as a practical matter, collectible.

would hinge the ascertainment of the date on which a property interest becomes "payable" or "deliverable" or "vested in possession" upon a determination as to whether the questions involved in pending litigation were or were not substantial.

The decision below is also consistent with the decisions of this Court relied upon in the Petition (Pet. 15–22). In both *United States* v. *Jones,* 236 U.S. 106, and *McCoach* v. *Pratt,* 236 U.S. 562, the statutory cut-off date occurred shortly after the testator's death, during a period when State law barred the legatees from compelling any distribution of the estate (in order to give creditors time to present claims). Thus actual reduction to possession was forestalled by State law, not by pending litigation. Similarly, in *Uterhart* v. *United States,* 240 U.S. 598, the very terms of the will provided that the legatee had no right to possession until he reached the age of twenty-one, which occurred after the statutory cut-off date; thus the legatee's reduction to possession was barred by the very terms of the insrument creating his right, rather than by pending litigation. Finally, in *The Peggy,* 1 Cranch 64, this Court held that a ship was not "definitively condemned" within the meaning of a treaty until the lower court judgment of condemnation was affirmed on appeal. In that case, however, the property derived its "condemned" status from a trial court judgment, and the only question was the "definitiveness" of a trial court judgment being appealed. By contrast, because the property here derived its "pay-

able or deliverable to or * * * vested in possession" status from the terms of the Bigelow trust, no court judgment was necessary.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1966.

[4] The decision below has, in addition, little prospective importance. The statute in question, creating the December 1961 cut-off date, was designed to terminate the vesting program under the Trading with the Enemy Act, and relatively few unresolved claims under the Act remain outstanding. On June 29, 1966, the President announced that the Office of Alien Property in the Department of Justice would close as of June 30, 1966. Remaining matters are to be handled by the part-time work of personnel in the Civil Division of the Department of Justice. As of April 30, 1966, there were pending some 50 administrative claims, 450 accounts, and 30 cases in litigation. See Report of Office of Alien Property—Message from the President, 112 Cong. Rec. 14095 (daily ed., June 30, 1966).

U.S. GOVERNMENT PRINTING OFFICE: 1966